
Local Government Committee

HB 1981

Brief Description: Concerning local government planning.

Sponsors: Representatives Pollet, Ryu and Santos.

Brief Summary of Bill

- Requires the Department of Commerce to undertake a study to determine the costs to cities and counties to revise their comprehensive plans and ensure compliance with the Growth Management Act; to distribute funds from the Local Government Support Account to ensure jurisdictions receives adequate funding for comprehensive plan updates; to develop provide planners and specialists to jurisdictions in developing comprehensive plans, along with model ordinances for plan implementation; and appropriates \$25,000,000 for the Department of Commerce to provide grants to Clark, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties, and the cities within those counties, for the costs of planning and meeting new requirements imposed under the Growth Management Act in the 2021-2022 Legislative Session.
- Expands the requirements of the housing element of the comprehensive plan to address displacement, increased economic integration, and affordable housing near transit; requires jurisdictions planning under the Growth Management Act to make various considerations, including examining infrastructure needs, when planning for new housing; and requires certain jurisdictions to adopt a housing plan sub-element with additional planning requirements.
- Expands the requirements of the capital facilities plan element to address health inequities and school capacity and changes the qualifications for cities to be exempt from the economic development element of the comprehensive plan.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

- Adds a new mandatory built environment livability element to the comprehensive plan.
- Prohibits homeowners' associations, common interest communities, and restrictive covenants from prohibiting housing types that the city in which the property is located would be required to allow.
- Authorizes increase in property tax levy of up to three percent based on population and inflation, with the difference between the increase and a one percent increase required to be used for planning under the Growth Management Act, the provision of infrastructure where a lack of infrastructure prevents infill, or to increase resiliency to climate change.
- Authorizes additional graduated state real estate excise tax to fund the Local Government Planning Support Account, with funds primarily be used by the Department of Commerce to provide grants to local governments for required comprehensive plan updates, and secondarily by the Department of Commerce to provide staff support and other assistance to local governments in planning.
- Authorizes counties to impose an additional real estate excise tax of up to .025 percent on the sale of properties that exceed the median home price in the county, with revenue to be used exclusively for planning under the Growth Management Act, for processing permits, or for providing incentives for affordable housing through the waiver of permit fees.

Hearing Date: 1/18/22

Staff: Kellen Wright (786-7134).

Background:

Growth Management Act Overview

The Growth Management Act (GMA) requires that certain counties, and the cities within those counties, engage in planning for future population growth. Counties that have a population of 50,000 or more and, prior to May 16, 1995, had its population grow by 10 percent or more in the proceeding 10 years, or, after May 16, 1995, by 17 percent or more in a 10-year period are covered by the GMA. So too is any county that experiences population growth of 20 percent over ten years. Counties with populations under 50,000, that would otherwise be required to plan, can remove themselves from the GMA's comprehensive planning requirements. Conversely, counties that do not meet the standards for automatic inclusion in the GMA may choose to be included. Currently, 18 counties are required to plan, 10 have chosen to plan, and 11 are not subject to the full GMA planning requirements.

Whether a county is automatically required to plan under the GMA or voluntarily chooses to, the planning requirements are largely the same. The county must develop a countywide planning policy to provide a framework in which the county and the cities within the county can develop consistent comprehensive plans. The county and cities must adopt development regulations to conserve agricultural lands, forestlands, and mineral resource lands. The county and cities must also adopt urban growth area (UGA) regulations. Finally, the county and cities must adopt a comprehensive land use plan and adopt development regulations consistent with the plan.

The comprehensive plan is the central part of the whole planning process. The Legislature has established 14 goals to act as the basis of all comprehensive plans. Examples of goals include reducing sprawl, providing for affordable housing, and protecting property rights. The comprehensive plan must address these goals and set out the policies and standards that are meant to guide the city or county's actions and decisions in the future. Comprehensive plans must contain certain elements, such as a land use element, a transportation element, and a capital facilities plan element. These elements must satisfy the requirements for each individual element while fitting within the overall comprehensive plan.

Mandatory Housing Element

Another required comprehensive plan element is a housing element. Legislation enacted in 2021 expanded the requirements of the comprehensive plan housing element. The housing element must ensure the vitality and character of established residential neighborhoods and:

- Include an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage growth projected by the Department of Commerce (Department), including:
 - Units for moderate, low, very low, and extremely-low income households; and
 - Emergency housing, emergency shelters, and permanent supportive housing.
- Include a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing;
- Identify sufficient capacity of land for various housing including government-assisted housing, housing for all levels of income, manufactured housing, and permanent supporting housing, and within an urban growth area, consideration of duplexes, triplexes, and townhomes;
- Make adequate provisions for existing and projected needs of all economic segments of the community, including:
 - Incorporating housing for households of all income levels;
 - Documenting programs and actions needed to achieve housing availability;
 - Consideration of housing locations in relation to employment locations; and
 - Consideration of the role of accessory dwelling units (ADUs) in meeting housing needs.
- Identify local policies and regulation that that result in racially disparate impacts, displacement, and exclusion of housing;
- Identify and implement policies and regulations to address and begin undo racially disparate impacts, displacement, and exclusion of housing;
- Identifies that may be at higher risk of displacement from market forces; and

- Establishes antidisplacement policies.

Mandatory Capital Facilities Plan Element

The capital facilities plan element must include an inventory of existing capital facilities owned by public entities; a forecast of the future needs of such capital facilities; the proposed locations and capacities of expanded or new capital facilities; at least a six-year plan that will finance such capital facilities with sources of public money for such purposes clearly identified; and a requirement to assess the land use element if probably funding falls short of meeting existing needs. Parks and recreation facilities must be included in the capital facilities plan element.

Economic Development Element

Every eight years, a county or city that is planning under the GMA must review and revise its comprehensive plan and development regulations to ensure that the plan and regulations comply with the requirements of the GMA. This review and revision requires legislative action from the county or city. The county and cities must establish a public participation program that provides notice to various interested or impacted individuals and organizations who can become involved in the process. The county and cities may generally only consider updates to the comprehensive plan once a year. The county must also update its designated UGAs.

New and amended comprehensive plan elements are required to be adopted into local government's next comprehensive plan update if the Legislature has provided sufficient funds to cover applicable planning costs at least two years prior the update. If the funding has not materialized, then the requirement to adopt a new or amended element is null and void until it does.

Comprehensive Plan Updates

Every eight years, a county or city that is planning under the GMA must review and revise its comprehensive plan and development regulations to ensure that the plan and regulations comply with the requirements of the GMA. This review and revision requires legislative action from the county or city. The county and cities must establish a public participation program that provides notice to various interested or impacted individuals and organizations who can become involved in the process. The county and cities may generally only consider updates to the comprehensive plan once a year. The county must also update its designated UGAs.

New and amended comprehensive plan elements are required to be adopted into local government's next comprehensive plan update if the Legislature has provided sufficient funds to cover applicable planning costs at least two years prior the update. If the funding has not materialized, then the requirement to adopt a new or amended element is null and void until it does.

Technical Assistance and Funding

The Department is required to assist cities and counties, both with funding and with technical assistance, in the adoption of comprehensive plans. The Department's assistance program must include a priority list for funding and technical assistance based on a county's or city's growth

rate, commercial and industrial development rate, and the existence and quality of a comprehensive plan, among other factors. The Department is also required to administer a grant program to provide direct financial assistance to local governments for the preparation of comprehensive plans. Other technical assistance required to be provided by Commerce includes utilizing Department staff and the staff of other agencies to assist in the development of comprehensive plans, including the provision of model land use ordinances, the adoption of procedural criteria, and regional education and training programs. The Department must also provide mediation services to cities and counties to resolve disputes between them that arise during the planning process.

Review and Evaluation Program

Counties west of the Cascade mountain range that had a population of more than 150,000 in 1996, Clark, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties, are also required to adopt, in consultation with the cities within those counties, a review and evaluation program. The purpose of this program is to compare the assumptions that went into the comprehensive plan with the actual growth that is occurring, and to identify measures to be taken to reduce the differences between the assumptions and the reality. The program must also provide for the collection, evaluation, and reconciliation of data, which must be collected and reviewed at least three years before the county's comprehensive plan is due to be updated.

Homeowners' Associations and Common Interest Communities

A homeowners' association is a legal entity made up of members who are owners of residential real property located within the association's jurisdiction and who are required to pay dues for the upkeep of the association and common areas. An association may adopt rules and regulate or limit the use of property by its members.

A common interest community is similar. It is made up of member-owners who are obligated to pay for the taxes, maintenance, or other costs of common areas. Like a homeowners' association, a common interest community may also regulate or limit the use of property by its members, including by adopting rules to establish and enforce construction and design criteria as well as aesthetic standards. A common interest community may generally only be terminated by the agreement of at least 80 percent of the members.

A restrictive covenant, or a restrictive deed, is a restriction or limitation on the use of the property that encumbers and runs with the land.

Taxes

Property tax is a tax levied on all real and personal property based on the value of the property, unless the property is subject to an exemption. There are two significant limitations on property tax in the State of Washington. The first is a constitutional limitation. Article 7, Section 2 of the State Constitution limits the amount of annual tax, from all sources, that may be levied upon property to one percent of the total value of that property. This limitation means that, without specific authorization from voters, the maximum tax that can be imposed per \$1,000 of value is \$10.

The other limit is statutory. Generally, the amount of property tax levied by a taxing district cannot be increased by more than one percent of the amount that was levied the prior year. In other words, the maximum that can be levied is 101 percent of the prior amount. If a taxing district does not use the full amount of increase that it could have in a year, it can bank the unused taxing capacity for future use. For example, if a taxing district keep the tax levy the same for a year, rather than increased it by one percent, it would be able to increase its levy in the future as if it had imposed the full one percent increase it was allowed.

Another form of taxation in the State of Washington is excise tax. An excise tax is generally a tax imposed on the sale of a specified good, service, or activity. The State of Washington imposes an excise tax on the sale of real estate. The rate of the tax imposed depends on the selling price of the property. The tax rate is 1.1 percent of the sales price on property that sells for less than \$500,001; 1.28 percent on property that sells for more than \$500,001 but less than \$1,500,001; 2.75 percent on property that sell for more than \$1,500,001 but less than \$3,000,001; and three percent on property that sells for more than \$3,000,001. The Department of Revenue will increase these thresholds by the rate of inflation or five percent, whichever is less, beginning in 2023 and then every four years thereafter. The graduated tax scale does not include timberland and agricultural land, which is tax at 1.28 percent regardless of what the selling price was.

Cities and counties are also authorized to impose an excise tax on the sale of real property. Counties may impose this tax in unincorporated areas, while cities may impose the tax within the city. There are two increments of tax that can be imposed, both individually limited to 0.25 percent of the selling price. The first 0.25 percent tax can be imposed by any city or county by the legislative authority of the city or county. In cities and counties with 5,000 or more people that plan under the Growth Management Act, the revenue from this tax must be used solely to finance capital improvements. Cities and counties with fewer than 5,000 people or those that do not plan under the Growth Management Act may instead use the revenue for any capital purpose. Counties and cities planning under the Growth Management Act may impose an additional .025 percent tax, also for use on capital projects. This tax may be imposed by the city or county legislative authority if the city or county is required to plan under the Growth Management Act, or after voter approval if the city or county is not required to plan but has voluntarily chosen to plan.

Floor Area or Lot Size Ratio

Floor area ratio is the measurement of a building's floor area in relation to the size of the lot or parcel on which the building is located.

Short Subdivision Process

Subdivision is the division of one lot into several lots which can be separately sold or leased. Short subdivision is subdividing a lot into four or fewer lots. The legislative authority of a city or town, or of a county planning under the GMA, can increase this limit to nine within an urban growth area. Short subdivisions can be summarily approved through an administrative process.

Net Density

Net density for residential land is the number of units per acre of land after required infrastructure and critical areas are deducted from the gross area.

Unit Lot Subdivision Process

A unit lot subdivision divides a specific development proposal on a parent lot into separate unit lots that allow for separate ownership.

Summary of Bill:

Technical Assistance and Funding

The Department is required to evaluate the costs for counties and cities to revise their comprehensive plans to comply with the GMA. The evaluation must be completed by December 1, 2022, and updated every five years. The evaluation is required to include the costs incurred to complete various types of planning requirements, such as updating a comprehensive plan to meet a new GMA goal or element.

The Department also must make planners and regulation specialists available to cities and counties to assist in the development of comprehensive plans. The personnel will be allocated to different regions, the Central Puget Sound, Western Washington, and Eastern Washington.

Additionally, Department must prepare model ordinances and regulations to cities and counties for use in implementing updates required under the GMA. If Department prepares a model ordinance or regulation after receiving public comment, including review and comment after a State Environmental Policy Act review, that ordinance or regulation will be entitled to deference in any review or appeal of a city or county's use of that ordinance or regulation.

The Department is required to provide grants to Clark, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties, and the cities within those counties, for the costs of planning and meeting new requirements imposed under the Growth Management Act in the 2021-2022 Legislative Session. \$25,000,000 is appropriated to Department for this purpose. When these counties and cities are completing their required review and evaluation program, they must also examine the existing infrastructure in each geographic area to determine what density increase and additional housing types can be supported, and how the infrastructure could be extended to accommodate additional density and housing types.

Mandatory Housing Element

The statement of goals, policies, objections, and mandatory provisions for the preservation, improvement, and development of housing within an urban growth area must include a plan to prevent displacement of very low, low, and moderate-income households and communities of color who have traditionally been disparately impacted by planning and zoning policies and practices. These plans must include specific provisions on how the jurisdiction will enable such households to remain in the community and provide opportunities for new very low, low, and moderate-income households. Any subarea of a jurisdiction that is required to allow for

development of four or more units on a property must adopt an antidisplacement policy program before subdividing the area.

To increase density within portions of an urban growth area that are within reasonable walking distance of frequent transit service, implementing regulations must provide for either the following types of housing or net density and increase in floor area ratio of residential coverage lots:

- Within one-quarter mile of frequent transit service, based on walking distance, jurisdictions with over 25,000 residents must allow for:
 - A lot of 4,000 or more square feet, at minimum, duplexes, cottage apartments, three town homes, and attached and detached ADU. For lots of 5,000 or more square feet, fourplexes or four townhomes must also be allowed; or
 - A net density of at least 33 residential units per acre relying on a mix of housing types, including multifamily housing, including either duplexes, townhomes, cottage apartments, and ADUs, or utilize a floor area or lot size ratio to accomplish this density;
- Within one-half mile of frequent transit service, based on walking distance, jurisdictions with over 25,000 residents must allow for:
 - A lot of 4,500 or more square feet, at minimum, duplexes, two townhomes, and both attached and detached ADUs; or
 - A net density of at least 20 residential units per acre relying on a mix of housing types, including multifamily housing, including duplexes, townhomes, cottage apartments, and ADUs, or utilize a floor area or lot size ration to accomplish this density; and
- Within one-quarter mile of frequent transit service, base on walking distance, jurisdictions with over 10,000 residents must allow for:
 - A lot of 5,000 or more square feet, at minimum, two residential units which must include duplexes, cottage apartments, and townhomes, and at least one attached and detached ADU; or
 - A net density of at least 16 residential units per acre relying on a mix of housing types, including multifamily housing, or utilize a floor area or lot size ration to accomplish this level of density.

Jurisdictions may apply all otherwise applicable regulations, including regulations for health, safety, setbacks, utility access, climate change goals, open space, limits on impermeable surface areas, sunlight, or tree canopy.

Required increases in density, floor area ratio, or the types of housing units allowed on lots with existing units effective after January 1, 2022, must be incorporated into appropriate development regulations applicable in all subareas of a jurisdiction required to plan under the GMA within two years after the jurisdiction adopts its next comprehensive plan. Plans must be based on findings in the record regarding whether infrastructure capacities are sufficient to meet increased demands on infrastructure and services required from the allowance of new infill, including:

- Sewage, septic system, and stormwater capacity;

- School capacity, including no new violations of standards regarding the number of students in classes, to be analyzed in consultation with school districts serving the particular area;
- Drinking and domestic water sources;
- Public safety services including fire and police;
- Plans to meet transportation needs of residents who are not within one-half mile of frequent transit or who, due to various reasons, may not be able to access transit or household shopping;
- Electricity capacity; and
- Open space and tree canopy goals.

The comprehensive plan must describe the mechanisms which will be utilized to ensure that transit frequency relied upon in the plan, development regulations, and permitting decisions is continued and will not be diminished. For any area where such transit frequency is not reasonably assured, the level of required density or mix of housing required may not increase above the next lower level of density or housing required.

In calculating net densities within one-quarter or one-half mile of frequent transit service, a jurisdiction may choose to exclude critical areas and open space protected from development from the area on which such calculations are based.

Adequate provisions for existing and projected needs of all economic segments of the community must include consideration of housing locations in relation to shopping for household essentials, including food and health products.

The housing element must also examine the infrastructure in geographic area to:

- Determine what increase in net density and additional housing types or subdivided lot sizes will be supported by the existing infrastructure; and
- Adopt plans to improve existing infrastructure to achieve goals of increasing the affordability of housing and increasing housing density within UGAs through infill development.

The increase in net density may be met for the area through any combination of allowable infill choices provided that there is no net displacement of residents and that increase in density also results in an increase of the affordable housing to lower and moderate-income residents. Jurisdictions must also plan to extend infrastructure so that any area of the jurisdiction within a UGA that is not subject to development restrictions will have infrastructure to support increased density through infill.

The housing element must also require significant increased economic integration among all economic segments of the population through the use of the various housing types and allow, to the extent supported by existing infrastructure, for infill development and mixed commercial-residential housing to support walkable shopping and increased density and subdivision of lots. Options for subdivision include:

- Cities with a population over 40,000, subdivision of lots to 3,200 square feet or 80 percent of the average lot on a block within a UGA;
- New development on lots under 3,200 square feet, a special exception is required which includes public notice and an opportunity to appeal to the Growth Management Hearings Board and through the Land Use Petition Act; and
- Short subdivision of lots developed with more than one house, ownership of houses may be divided using the unit lot subdivision process.

Additionally, the housing element must establish a goal and plan to adopt development regulations, investments, incentives, or other programs which will achieve substantial measurable progress over a 20-year planning horizon toward increased economic and racial integration of the jurisdiction through programs encouraging, investing in, or incentivizing new affordable housing options including duplexes, triplexes, townhomes, ADUs, multifamily homes, subdivision above minimum lot size, or with condominium common ownership.

The housing element must also identify areas that may be at higher risk of displacement from market forces that occur with changes to zoning development regulations and capital investments.

For antidisplacement policies, the county or city must make a finding that comprehensive plans and development regulations affirmatively prevent displacement of lower and moderate-income community members. Communities must be based on community input solicited through appropriate outreach.

Finally, to address the loss of affordable housing due to market forces and increasing density requirements, and to increase the benefits for children, health, and equity, each jurisdiction with 25,000 residents or more must adopt a housing element sub-element which ensures that through fees, zoning, investments, subsidies, or development incentives, all new development of residential units with four or more units within the UGA shall have at least one unit of each four units which is affordable to households at the very low, low, and moderate-income levels.

Capital Facilities Plan Element

Park and recreation facilities that must be included in the capital facilities plan element must include specific goals and implement plans to address health inequities, including those due to high heat resulting from climate changes, which will ensure open space for recreation accessible within one-half mile of residents residing within UGAs in areas with net densities exceeding 33 units per acre.

The capital facilities plan element must also include plans, developed in consultation with school districts, for adequate school capacity to meet demands for class size in public schools. Such plans must provide a reasonable basis to ensure that lands and financing to meet school capacity needs will be met through local levies.

Economic Development Element

Cities that have chose to be residential communities are only exempt from the economic development element of the comprehensive plan if the city's comprehensive plan includes provisions for how residents of any portion of the city which will be required to plan for increased infill density within one-half mile of frequent transit service will have access to shopping for food and health products without reliance on fossil-fueled vehicles.

Built Environment Livability Element

A new element is added to the comprehensive plan ensuring that all residential neighborhoods within a UGA with a density of over five housing units per acre have tree canopy or green open space to prevent extreme heat islands to protect and improve the physical and mental health of residents in urban settings.

The Department must give particular consideration to the needs of residents in areas with density of 33 or more residential units per acre for tree canopy and open space within one-half mile of their homes and, in consultation with the Departments of Health and Ecology, adopt standards to promote these goals. This element must also include provisions that provide for access to sunlight in residential and school spaces.

Homeowners' Associations and Common Interest Communities

Neither homeowners' associations nor common interest communities can prohibit the development of a type of housing that the city in which the association or community is located would be required to allow under the Growth Management Act. Any rules or regulations that the associations or communities have adopted to the contrary are void and unenforceable. Similarly, no restrictive covenant or deed can prevent the development of a type of housing that the city in which the property subject to the restriction is located in would be required to allow, and contrary covenants and restrictions are unenforceable.

Taxes

A property tax levy may be increased based on the annual percentage increase of inflation and population, up to a maximum of three percent. Thus, a tax levy may be up to 103 percent of the levy of the prior year. If the increase is more than one percent, the entirety of the difference in revenue between a one percent increase and the actual increase must be used for planning under the Growth Management Act, the provision of infrastructure where a lack of infrastructure prevents infill, or to increase resiliency to climate change. The maximum unused property tax increase that can be banked for use in future years is one percent.

An additional state real estate excise tax is imposed at .03 percent of the price on a sale of property with a selling price greater than \$500,000 but less than \$1,500,001; at .08 percent on a sale of property of with a selling price greater than \$1,500,001 but less than \$3,000,001; and at .11 percent on a sale of property with a selling price of more than \$3,000,001. These prices must be adjusted by the Department of Revenue beginning in 2028, and every four years thereafter to either the percentage increase in inflation or five percent, whichever is less. All revenue from this tax must be deposited in the Local Government Planning Support Account.

The Local Government Planning Support Account can be used by Department for two purposes. The first, and primary, way that the funds can be used is to provide grants to local governments for required comprehensive plan updates and for development regulation updates required by newly adopted comprehensive plan elements. The grants are to ensure that each jurisdiction receives adequate funding and must be based on the evaluation conducted by Department into the cost of plan updates. Any funds not used for this primary purpose may be used by Department to provide staff, planners, and specialists to cities and counties; to prepare development ordinances, regulations, and policies consistent with the Growth Management Act and to assist local governments with processing complex permits consistent with such documents; to develop model ordinances and provide mediation services, including to assist federally recognized Indian tribes and local governments cooperate in planning; or to contract with a nonprofit organization to provide technical assistance and training to local governments.

A county legislative authority may impose an additional excise tax on the sale of real estate of up to .025 percent. The revenue from this tax must be used exclusively for planning under the Growth Management Act, for processing permits, or for providing incentives for affordable housing through the waiver of permit fees. This tax may only be imposed of the sale of properties that exceed the median home price within the county, as determined by the county assessor's office.

Appropriation: The sum of \$25,000,000.

Fiscal Note: Requested on January 14, 2022.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.